

June 19, 2019

Mr. Henry Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, MD 21057

RE: McDonogh Overlook
Forest Conservation Variance
Tracking # 02-19-2993

Dear Mr. Leskinen:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department of Environmental Protection and Sustainability (EPS) on April 24, 2019. The variance, requested in accordance with Section 33-6-116 of this Law, seeks approval to remove seventeen (17) specimen trees for the construction of a nine-lot residential subdivision on a 3.6-acre in-fill parcel that is currently a dilapidated homesite containing no definitive forest. Of the 17 specimen trees to be removed, the ten native or naturalized trees in fair condition or better include: a 38-inch diameter at breast height (DBH) sycamore (*Platanus occidentalis*) in good condition; a 33-inch DBH black locust (*Robinia pseudoacacia*) in fair condition; a 48-inch DBH box elder (*Acer negundo*) in good condition; a 34-inch DBH white pine (*Pinus strobus*) in good condition, a 32-inch DBH white pine in fair condition; a 30-inch catalpa tree (*Catalpa bignonioides*) in fair condition, a 45-inch DBH catalpa in fair condition, a 50-inch bald cypress (*Taxodium distichum*) in good condition, a 49-inch DBH bald cypress in good condition, and a 36-inch DBH loblolly pine (*Pinus taeda*) in good condition. The remaining seven specimens are nonnative or are in poor condition and include two Norway spruces, two Osage orange trees, a ginkgo tree, a black cherry, and a black locust. The applicant proposes to pay a fee-in-lieu of mitigation for the native or naturalized specimen trees to be removed that are in fair condition or better.

The Director of EPS may grant a special variance to the Forest Conservation law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the three criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant is seeking to redevelop a residential home site as a 9-lot residential subdivision. While full application of the law would provide a hardship to developing a major subdivision on the 3.6-acre property due to the number and locations of the trees, the site could be redeveloped as a single residence or possibly minor subdivision. Therefore, denying the variance would not deprive the petitioner of all beneficial use of the property; thus, this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The petitioner's plight is due to unique circumstances associated with the number and distribution of specimen trees relative to the buildable area rather than the general conditions in the neighborhood. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The proposed dwelling units are consistent with the style and density of the surrounding residential neighborhood. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The specimen trees to be removed are not within any. Impacts to the unforested Forest Buffer Easement to provide flood control required by Baltimore County will be mitigated onsite through the afforestation of remaining Forest Buffer Easement. Moreover, the project will meet current water quality management requirements. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The petitioner has not taken any actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Permitting the removal of seventeen specimen trees to construct a development that will comply with both the Forest Buffer Law and the Forest Conservation Law would be consistent with the spirit and intent the

Forest Conservation Law. This is especially true given that no forest would be cleared for this development activity, and that a net gain in forest within a priority planting area would result. Additionally, seven of the seventeen trees to be removed are in poor condition or are nonnative species. A fee in lieu of mitigation for removing the ten native specimen trees in fair condition or better will be paid. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Mitigation for the removal of the ten native or naturalized specimen trees in fair condition or better shall be addressed by paying a \$15,654 fee in lieu of mitigation based on 25% of the critical root zones of these trees. This fee shall be paid to EPS prior to approval of any permit. Checks must be made payable to Baltimore County.
2. Prior to issuance of any Baltimore County permit, blaze orange high visibility fence shall be installed along the limit of disturbance (LOD) wherever the LOD is within 50 feet of any remaining specimen tree, Forest Buffer Easement, or Forest Conservation Easement. This protective fence shall be illustrated on the plan view on the FCP/FBPP and mentioned in the sequence of operations on the sediment control plan.
3. The following note must appear on all subsequent plans for this project:
 - “A special variance was granted on June 19, 2019 to Baltimore County’s Forest Conservation Law to allow removal of seventeen specimen trees. Conditions were placed on this variance, including payment of a fee in lieu of mitigation for the viable native specimen trees to be removed.”

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the appropriate representative sign the statement on the following page and return a signed copy of this entire letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

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If you have any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/ges

- c. Forte Equity ST, LLC
Marian Honeczy, Maryland Dept. of Natural Resources

I/we agree to the conditions enumerated in this approval letter to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Owner/Developer

Date

Printed Name